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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 SCOTT C. SMITH,

11 Plaintiff,

12 vs.

13 SGT. SULLIVAN, et al.,

14 Defendants.

Case No. 09-5228-RJB-KLS

ORDER ADOPTING REPORT
AND RECOMMENDATION

15 This matter comes before the Court on the Report and Recommendation of U.S. Magistrate Judge
16 Karen L. Strombom. Dkt. 22. The Court has considered the Report and Recommendation, Plaintiff's
17 objections (Dkt. 23), Defendants' response (Dkt. 24), and the record herein.

18 The Report and Recommendation thoroughly discusses the facts and law at issue here, and it should
19 be adopted. The defendants move to dismiss the plaintiff's civil rights complaint on four grounds: 1) they
20 cannot be held liable for § 1983 violations under a theory of *respondeat superior*; 2) the doctrine of *res*
21 *judicata* bars the plaintiff from proceeding with his claims; 3) the plaintiff's claim for injunctive relief is
22 moot because he has been transferred to a different correctional facility; and 4) the court should decline to
23 exercise supplemental jurisdiction over the plaintiff's state law claim. Dkt. 16.

24 The Report recommends the following: that the court grant the defendants' motion to dismiss all
25 claims against defendants Jones, Hardy, and Ceden; that the court grant the defendants' motion to dismiss
26 the second cause of action (failure to adequately train or supervise) against defendant Sullivan; that the
27 court deny the defendants' motion to dismiss the first and third causes of action (violation of First and
28 Fourteenth Amendment rights and negligent performance of duty) against defendant Sullivan; and that the

1 court refer the matter back to the Magistrate Judge for further proceedings. Dkt. 22.

2 The plaintiff objects to several points contained within the Report. First, the plaintiff argues that
3 his previously litigated action, (used as the basis for the Report's *res judicata* analysis), never addressed
4 the issue of the defendants' failure to adequately supervise or train corrections staff. However, the plaintiff
5 mistakes the Report's conclusion regarding *res judicata*, which is the basis for the recommendation to
6 dismiss the first and third causes of action against each defendant except Defendant Sullivan, with the
7 Report's conclusion regarding *respondeat superior*, which is the basis for the recommendation to dismiss
8 the second cause of action against each defendant. The fact that the previous action never addressed
9 supervisor liability is immaterial to the Report's conclusion that there is no *respondeat superior* theory of
10 liability for § 1983 violations.

11 The plaintiff next objects to the Report's *res judicata* analysis. The plaintiff argues that litigation of
12 the current claim was not possible during his previous action due to facility rules regarding access to legal
13 paperwork. The plaintiff also attacks the Report's application of the facts to the elements of *res judicata*.
14 However, the Report adequately addresses each concern raised in the plaintiff's objection in reaching its
15 recommendation and the objection does not warrant further analysis or discussion.

16 Lastly, the plaintiff objects to the Report's conclusion that he has failed to adequately request
17 injunctive relief. The plaintiff's only argument regards the allegation that the defendants refuse to return
18 the plaintiff's confiscated letter. The Report adequately addresses this concern in reaching its
19 recommendation and the objection does not warrant further analysis or discussion.

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21 The Court hereby **FINDS** and **ORDERS**:

- 22 1. The court adopts the Report and Recommendation (Dkt. 22);
23 2. Defendants' Motion to Dismiss (Dkt. 16) is **GRANTED** in part and **DENIED** in part as
24 follows:

- 25 i. Defendants' Motion to Dismiss insofar as it relates to claims against defendants Jones,
26 Hardy, and Cedenio is **GRANTED**, and the Plaintiff's causes of action against these
27 defendants are **DISMISSED**;
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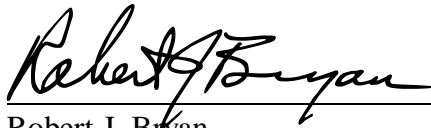
1 ii. Defendants' Motion to Dismiss insofar as it relates to the claim of failure to adequately
2 train or supervise employees against Defendant Sullivan is GRANTED, and the Plaintiff's
3 second cause of action against Defendant Sullivan is DISMISSED;

4 iii. Defendants' Motion to Dismiss insofar as it relates to claims of violation of First and
5 Fourteenth Amendment rights and negligent performance of duty against Defendant
6 Sullivan is DENIED;

7 3. This matter is referred to the Hon. Karen L. Strombom for all further proceedings regarding the
8 remaining claims against Defendant Sullivan; and

9 The Clerk is directed to send copies of this Order to plaintiff, all attorneys of record, and to the
10 Hon. Karen L. Strombom.

11 DATED this 1st day of December, 2009.

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14 Robert J. Bryan
15 United States District Judge
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